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In the Supreme Court of the United States

OCTOBER TERM, 1963

UNITED STATES OF AMERICA, PETITIONER

v.

JAMES R. SEALS, JR.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

ARCHIBALD COX,
Solicitor General,
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Washington, D.C., 20530.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statement	2
Reasons for granting the writ	7
Conclusion	12
Appendix	13

CITATIONS

Cases:

Anderson v. *United States*, 318 U.S. 350 2
Mallory v. *United States*, 354 U.S. 449 ..... 2, 7, 8, 14
United States v. *Vita*, 294 F. 2d 524, certiorari denied, 369 U.S. 823 ..... 2, 7, 10, 11, 12

Miscellaneous:

Federal Rules of Criminal Procedure, Rule 5(a) 7

717-56—64——1

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The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit reversing respondent's conviction of bank robbery.

OPINION BELOW

The opinion of the court of appeals (App., *infra*, pp. 13–19) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on November 15, 1963. The time to file a petition for a writ of certiorari was extended to and including January 14, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a confession given during questioning in an F.B.I. office by a person who came there voluntarily and was told that he was not under arrest and was free to leave was properly held inadmissible in evidence on the authority of *Mallory* v. *United States*, 354 U.S. 449.

STATEMENT

The United States Court of Appeals for the District of Columbia Circuit reversed respondent's conviction of bank robbery on the ground that a confession introduced in evidence at the trial had been obtained during a period of unlawful detention following arrest, in violation of *Mallory* v. *United States*, 354 U.S. 449. The pertinent facts, as they were developed at a hearing (J.A. 9–38) and at the trial (J.A. 39–83), are as follows:[1]

At approximately 3:00 p.m. on September 25, 1961, two F.B.I. agents, who were investigating a bank robbery which had occurred a week earlier, approached respondent as he was walking in the vicinity of the Bell Vocational School (J.A. 9–10, 18, 59). Agent Bernard Buscher, after identifying himself to respondent, asked if he "minded stepping over to the auto-

[1] Respondent testified at the hearing and at the trial (J.A. 97–107). Insofar as his testimony was in conflict with that of the government's witnesses, the trial judge indicated that he credited the testimony of the latter (J.A. 38). Since the operative facts for appellate purposes are as reflected in "the testimony of Government witnesses and so much of the petitioners' evidence as is uncontradicted" (*Anderson* v. *United States*, 318 U.S. 350, 351, note 1), the facts set forth above are based on the testimony of the agents.

mobile," explaining that they "wanted to talk to him" (J.A. 10, 18, 48, 59). Respondent followed the agents to their car, which was parked across the street, and entered the back seat (J.A. 10, 18, 59).

In order to avoid creating a disturbance among students emerging from the school, the agents drove the car about three or four blocks to a point in front of the Telephone Company building on Columbia Road, just west of 14th Street (J.A. 10, 18–19, 48–49). There they were joined by another F.B.I. agent, Lawrence Buscher, and an officer of the Metropolitan Police (J.A. 30, 49, 51, 60, 63, 68). Agent Bernard Buscher advised respondent that he was not under arrest,[2] that he did not have to make any statement, but that anything he said could be used against him (J.A. 10–11, 30, 48, 53). Respondent said, "well, I have not done anything. I don't mind talking" (J.A. 11, 48).

Agent Bernard Buscher then questioned respondent as to whether he had been involved in the robbery of the Riggs bank at Columbia Road (J.A. 11). Respondent was asked whether he had recently purchased a pair of shoes and whether he had a large sum of money in his possession (J.A. 11, 49). Respondent acknowledged buying shoes, but denied having a large sum of money in his possession and emptied his pockets to prove it (J.A. 11). He said that if he had been involved in a bank robbery he would be "foolish to stay around here because I would have the money with me" (J.A. 11, 49–50). When an

[2] This was apparently in response to an inquiry by respondent as to whether he was under arrest (J.A. 68).

agent remarked that respondent might have the money at home, respondent invited the agents to search his house (J.A. 11, 50). Respondent executed, in the automobile, a written consent to the search of his house (J.A. 11–13, 50–51). The questioning in the automobile lasted 15 or 20 minutes (J.A. 11, 30, 60).

The officers then drove with respondent to his home, a two-room basement apartment (J.A. 12–13, 61). The search took from 30 to 45 minutes (J.A. 13–14, 61). There were in the apartment at the time, in addition to respondent and the officers, the person with whom respondent lived and a friend (J.A. 19, 27, 30, 51). Respondent was not restrained in any way; he wandered about the apartment, and at one point poured himself and drank a "shot" of gin (J.A. 13, 27, 29, 52, 61, 69). He was not questioned during the search (J.A. 61).

Thereafter agents Bernard and Lawrence Buscher asked respondent if he would accompany them to the F.B.I. Washington Field Office for further questioning, and respondent said that he did not object (J.A. 14, 19–20, 52, 61). The other two men in the apartment also agreed to go (J.A. 30–31, 52, 61).[3] One agent drove a car with respondent to the Field Office located in the Old Post Office Building on Pennsylvania Avenue (J.A. 19, 22, 52, 63, 65, 72). Respondent was taken to a room on the fifth floor furnished as an ordinary office. To reach it, it was necessary to pass through a railing with a gate, located near the elevator door, at which there was stationed a receptionist whose duty it was to inspect the pass or

[3] The record is silent as to these two men after they reached the F.B.I. office.

credentials of the person entering (J.A. 23, 31, 33–34, 62).

At about 4:45 p.m. agents Bernard and Lawrence Buscher began to question respondent. After they had obtained background facts, at about 5:00 p.m. respondent asked if was "locked up" and was told that he was not, but was free to leave at any time (J.A. 15, 27–28, 53–54). He was also told that he could have a lawyer and that he did not have to talk, but that anything he said could be used against him (J.A. 15, 53). Respondent was permitted to smoke, was offered food, which he declined, and was given soft drinks (J.A. 15, 29, 32, 54, 64, 74, 75). At approximately 6:00 p.m. agent Bernard Buscher asked respondent if he would take a lie detector test, and respondent said that he wished to do so (J.A. 16). Respondent was again told that he was not under arrest and that there was no way the agents could make him take the test if he did not volunteer (J.A. 27, 70). Respondent was taken to a room on the fourth floor where agent Woods, the operator of the polygraph, explained to respondent how it worked, advised him of his right not to take the test, of his right to talk to a lawyer, and of his right not to talk to the agent (J.A. 16, 35, 40, 42, 44, 47, 54). At the conclusion of the explanation, which lasted about fifteen minutes, respondent said that he did not wish to take the test (J.A. 16, 35, 42, 44, 54).

Agent Bernard Buscher, with agent Woods present, then resumed questioning respondent (J.A. 16, 42, 45). When Buscher told respondent that there were witnesses who had implicated him in the robbery, re-

spondent said, "you bring somebody in front of me to tell me that" (J.A. 16). Buscher left to get a witness. Before he returned, respondent began admitting to Woods his participation in the robbery. This was some time between 6:50 and 7:10 p.m. (J.A. 16–17, 35, 45). At about 7:10, respondent was told he was under arrest (J.A. 17, 28, 58, 66, 71, 76). He finished making his confession at about 7:35 p.m. (J.A. 57) and was brought before a commissioner at about 8 p.m. (J.A. 28, 71, 77, 79).

After hearing the evidence outside the presence of the jury, the trial judge ruled that there was no reason to exclude the confession since it was not made during a period of unlawful detention after arrest (J.A. 38–39). The judge said, *inter alia* (J.A. 38):

> Giving consideration to those who have testified and placing the credibility where the Court feels it does properly rest, I am constrained to hold that this man was not arrested, in even the technical sense of arrest, and from the evidence before me, this man was free to go and further that at points which are important, he was advised that he could go.

In reversing respondent's conviction, the court of appeals concluded that respondent "was under arrest at least from the time (about 4:30 p.m.) he was brought to the Field Office in the company of the agents." In its view, the fact that respondent was in the equivalent of a police station in constant company of one or more F.B.I. agents who were questioning him "dictate[s] a finding that even without any physical restraint Seals necessarily must have understood that he was in the power and custody of the FBI

and that he submitted to questioning in consequence." It ruled that the statements to Seals that he was not under arrest would, in the circumstances, hardly have suggested to him that he was in fact free. On the basis of this ruling that respondent was arrested at 4:30 p.m., the court concluded that the confession was the result of an unreasonable delay in arraignment, in violation of the rule laid down by this Court in the *Mallory* case, *supra*.

REASONS FOR GRANTING THE WRIT

1. The decision of the court of appeals, as we point out below, is in direct conflict with the decision of the Second Circuit in *United States* v. *Vita*, 294 F. 2d 524 (C.A. 2), certiorari denied, 369 U.S. 823. Moreover, it has profound implications for federal law enforcement not only in the District of Columbia, but throughout the country.

In *Mallory* v. *United States*, 354 U.S. 449, this Court held that Rule 5(a) of the Federal Rules of Criminal Procedure requires federal officers to arraign an arrested person before a magistrate "without unnecessary delay," and that a confession obtained during interrogation in violation of this Rule may not be admitted in evidence. The court below held that interrogation of a suspect at the offices of an investigatory agency or a police station is so inherently coercive that it must be equated with an arrest, even though it was made clear to the suspect that he was not required to accompany the officers to the office, that he had the right to remain silent and to consult counsel, that he was free to leave at any time, and that he was not

under arrest. The thrust of the opinion below is to outlaw official questioning of suspects by law enforcement agents, at least at police headquarters, no matter how conscientious an effort is made to inform the person questioned of his rights.

Our disagreement with the decision below is not over the court's view of the facts. The court of appeals purported to accept the findings of the district court, which were based on witnesses appearing before it. Recognizing that respondent was told three times that he was not under arrest and told once that he could leave at any time, the court concluded that questioning at F.B.I. offices or at a police station is inherently coercive. In short, the court below has held, as a matter of law, that questioning of suspects in police headquarters is coercive no matter how explicitly they are informed that they are not under arrest and may leave.

That the ruling of the court of appeals is important to all investigative branches of the federal government hardly needs elaboration. The importance of interrogation, both of witnesses and suspects, in the detection of crime is universally recognized. The thrust of the *Mallory* decision, as the government has understood it, is that, important as that technique may be, a person cannot be deprived of his liberty by an arrest in order to afford police officers an opportunity to question him. This is in large part because an arrest places the suspect within the control of the police and may well coerce him to surrender his constitutional right to remain silent and have counsel. Until the decision below, however, there has been no

suggestion, so far as we are aware, that there is anything improper in the mere questioning of a suspect who voluntarily submits to being interviewed, who is informed of his rights and who is told that he may terminate the interview at any time.

2. The fundamental error of the opinion below is that it equates the psychological problems faced by an accused person with the restraint of an arrest. No doubt, any person guilty of a crime who is invited to talk with investigative agents is presented with a choice which may be difficult. He may well believe that a refusal to talk will cast further suspicion upon him, and he must decide whether to take that path or whether to endeavor, by talking, to allay suspicion. It is only in this sense that the conclusion of the court below that respondent must have felt himself "not free" is consistent with the findings of the district court as supported by the evidence. But that is hardly the same thing as an arrest, whereby a person is kept in actual restraint and has no option to terminate the interview. So long as a person is given a clear choice of talking or not talking, without physical restraint, we submit that it is proper to ask him questions which he is willing to answer.

The record shows that respondent thought that he had covered his tracks so well that he could avert suspicion by talking. While respondent was young, he was obviously not inexperienced.[4] Nor is there any suggestion that he was in any way mentally de-

[4] The respondent had twice been arrested: once for housebreaking, when he was convicted of the lesser offense of unlawful entry, and once for robbery.

ficient. He knew enough to invite the agents to his apartment where he believed, correctly, that they would find nothing. He knew enough to ask the agents if he was under arrest. There is no reason to believe that, when the agents thrice told respondent that he was not under arrest (twice at the F.B.I. office), he was confused as to whether he was free to leave. Indeed, he was once specifically told that he could leave the office at any time. In the face of these explicit statements, the presence of a railing and receptionist at the entrance to the office where he was questioned—obviously measures for excluding intruders but facts upon which the court below relied—has no tendency to show that the respondent was under coercion to stay. At most, the only restraining influence upon respondent was his own belief that if he did not submit to an interview or if he left in the middle of the questioning, he might confirm whatever suspicions the agents had about his participation in the robbery. Such apprehensions, nourished by consciousness of guilt, do not, we submit, make out a basis for inferring that petitioner was under arrest.[5]

3. The decision below is in direct conflict with the decision of the Second Circuit in *United States* v.

[5] We believe that the question whether a person is under arrest depends on the objective facts, not what the suspect subjectively believes. However, the distinction is not crucial here. While at one point respondent testified that he believed that he was under arrest from the time he first entered the F.B.I. automobile, at another time he said that he considered himself free to leave at any time. The district court credited this second statement (J.A. 38). Its ruling is supported not only by the conflict in respondent's own testimony, but by the three explicit statements made to him by the officers that he was not under arrest and the one statement that he was free to leave.

Vita, 294 F. 2d 524 (C.A. 2), certiorari denied, 369 U.S. 823. The opinion below virtually acknowledges this, suggesting only a difference in the fact that respondent, who was 19, was younger than Vita. In the *Vita* case, the defendant, then 28 years old, and a female companion were driven to the F.B.I. offices in New York at about 10:25 a.m., the defendant confessed at about 6:30 p.m., and he was formally arrested at 6:52 p.m. He was told that he was not under arrest and could leave at any time. During the more than eight hours he was at the F.B.I. offices prior to his confession and arrest, the defendant appeared in two line-ups, was fingerprinted, and was questioned for considerable periods. He was in a security building where even government attorneys were not allowed to walk in the halls at will. The court nevertheless found that Vita had not been arrested because he voluntarily accompanied the agents to the office and because he was told that he was not under arrest and that he was free to leave at any time.[6] The Second Circuit said (294 F. 2d at 529):

> Vita was apparently confident of his ability to talk himself clear of whatever suspicions the F.B.I. had of his possible complicity. Surprising as it may seem, the guilty are often as eager as the innocent to explain what they can to law enforcement officials. The very same

[6] This is the first of two alternative holdings in the *Vita* case. The court also stated that, even if the defendant had been arrested when he was first questioned, the *Mallory* rule was not violated. Judge Waterman, *concurring*, *disagreed* with this second holding.

> naive optimism which spurs the criminal on to commit his illegal act in the belief that it will not be detected often leads him to feel that in a face-to-face encounter with the authorities he will be able to beguile them into exculpating him. Having chosen to talk with the F.B.I. agents, Vita cannot now be heard to complain because his calculated risk worked to his disadvantage

These observations pertain here. Only the age of the suspects differentiates this case from *Vita*. That factor is obviously not significant since petitioner was knowledgeable enough to ask specifically whether he was under arrest and he was told three times before he confessed that he was not under arrest and once that he was free to leave. The real difference between the decision below and *Vita* is in the court's concept of what constitutes proper conduct by law enforcement officers. That is an issue of substantial public importance which this Court should resolve.

CONCLUSION

In view of the conflict of circuits and the importance of the issue, we respectfully submit that this petition for a writ of certiorari should be granted.

ARCHIBALD COX,
Solicitor General.

HERBERT J. MILLER, JR.,
Assistant Attorney General.

JANUARY 1964.

APPENDIX

United States Court of Appeals for the District of Columbia Circuit

No. 17550

JAMES R. SEALS, JR., APPELLANT,

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Decided November 15, 1963

Mr. Peter R. Cella, Jr., with whom Mr. William E. Stewart, Jr. (both appointed by this court), was on the brief, for appellant.

Mr. William C. Weitzel, Jr., Assistant United States Attorney, with whom Messrs. David C. Acheson, United States Attorney, Frank Q. Nebeker, and Frederick G. Smithson, Assistant United States Attorneys, were on the brief, for appellee.

Before BAZELON, *Chief Judge*, and WASHINGTON and MCGOWAN, *Circuit Judges*.

WASHINGTON, *Circuit Judge*: This is yet another case in which the central issue before us is whether the use of a confession in a criminal trial should have been barred because it was allegedly the product of illegal detention by law enforcement officers. See *Mallory* v. *United States*, 354 U.S. 449 (1957).

The bank robbery in which appellant Seals allegedly participated, and for which he was convicted, along

with one Harold Greenwell, occurred on September 18, 1961.[1]

On September 25, 1961, at about 3:05 or 3:10 in the afternoon, Seals was walking in the vicinity of Bell Vocational High School, which he attended, in the Northwest section of Washington. He was then 19 years old. According to the Government's evidence, the following occurred: An agent of the Federal Bureau of Investigation approached Seals, identified himself, and showed his credentials. He asked Seals "if he minded stepping over to the automobile, I wanted to talk to him." Seals made no objection, followed the agent, and got in the back seat of the automobile.[2] Another agent took the wheel, drove a few blocks and parked the automobile. Seals was then informed that he was not under arrest, that he need not make any statement, and that anything he said could be used against him. After Seals said "I have not done anything. I don't mind talking," he was questioned about the bank robbery, a large sum of money thought to be in his possession, and the purchase of a pair of shoes. Seals had only about a dollar on his person and offered to go with the agents to his apartment, stating "you can search if you want

[1] Both were charged under 18 U.S.C. § 2113(a). Both appealed their convictions to this court. Greenwell's appeal came on for hearing separately, and was decided on grounds not relevant here. See *Greenwell* v. *United States*, —— U.S. App. D.C. ——, 317 F. 2d 108 (1963).

[2] Appellant's account is as follows: "I was walking south on Hiatt Place towards Irving Street and as I got a few yards away from the school building, two men came out of a vehicle and approached me and I had a notebook in one hand and one of them grabbed me by the arm and then they showed me a FBI badge and asked me to come over to the car with them. * * *" He characterized his own impression of this incident in these terms: "I figured it to be under arrest when they first grabbed me in front of the school."

to." He signed a form of consent for the search. They arrived at Seal's apartment at 3:45. Seals moved about freely while the agents searched the premises. He went to the kitchen for a glass and poured a shot of gin from a bottle. He drank it. Several other people, including one Floyd Davis, with whom Seals lived, were in the apartment at the time. Seals was not touched or questioned at his home.

At about 4:15 p.m. Seals was asked to come to the FBI Field Office in downtown Washington "to talk further"; "he volunteered to go." Floyd Davis and another man also went to the Field Office with the agents in the latter's cars. The group arrived at the building housing the Field Office at about 4:30. They went to the fifth floor of the building and entered the FBI offices through a gate manned by a male "receptionist," whose duty it was to inspect the pass or other credentials of the one entering before he admitted him.[3]

At 4:45 p.m., in one of the offices, the agents resumed their questioning of Seals. They advised him that he had a right to consult an attorney, to keep silent, that anything he said could be used against him, and that he was free to go at any time. The questioning continued for about an hour and forty-five minutes. Twice during the interrogation Seals asked if he was "locked up," and was advised that he was not. Seals was allowed to smoke. He was asked if he wished anything to eat and was offered milk to drink. He refused food and the milk but at his request he was on two occasions given a bottle of soda.

During the questioning Seals was asked to take a lie detector test. He stated that he wanted to take it in order to establish his innocence. He was brought to

[3] Credentials were not asked for and examined when a person left. But there is nothing to show that Seals knew this.

the fourth floor, where the polygraph operator in the presence of another agent told him that he did not have to talk, and did not have to take the test; that he had a right to consult a lawyer before talking; but that if he talked, what he said could be used against him in court. The operator then explained the complete operation of the lie detector and the test to him. After hearing this explanation, Seals stated that he did not wish to take the test. One agent thereupon told Seals that there were witnesses who could link him to the robbery. Seals asked to be confronted and the agent left to bring such a witness. Before the agent returned to the room, Seals began (about 7:10 p.m.) admitting his participation in the bank robbery. He was then notified that he was under arrest and was taken before a Commissioner within the hour.

After a hearing out of the presence of the jury, the trial judge found that the defendant was not under arrest before he confessed, saying in part:

> [F]rom the evidence before me, [I hold] this man was free to go and further that at points which are important, he was advised that he could go.
>
> * * * * *
>
> This defendant from the stand, himself, stated there was no reason why he couldn't go.[4]

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[4] The reference by the trial judge apparently is to this exchange:

"Q. Was there any reason why you didn't go?

"A. Well— No, sir."

As heretofore noted, see fn. 2, appellant had stated his belief to be that he had been under arrest from the beginning. He also denied flatly before the jury that he had ever been told at the Field Office building at any time that he was free to leave, that he had a right to talk to a lawyer, or that he need not make a statement. Such conflicts in testimony concerning what is actually said and done in the privacy of police detention prior to arraignment seem almost inevitable. This is one of the problems which Rule 5(a) was intended to obviate.

Viewing the evidence in the light most favorable to the Government, and giving the court's finding the great weight to which it is entitled, we must nevertheless conclude that Seals was under arrest at least from the time (about 4:30 p.m.) he was brought to the Field Office in the company of the agents. Such a conclusion seems to us well nigh irresistible. By that time, Seals "would have been rash indeed to suppose he was not under arrest." *Kelley* v. *United States*, 111 U.S. App. D.C. 396, 398, 298 F. 2d 310, 312 (1961). From that point on he was in what was the equivalent of a police station, he was in the constant company of one or more FBI agents, and was subjected to almost constant interrogation. It seems to us that these circumstances dictate a finding that even without any physical restraint Seals necessarily must have understood that he was in the power and custody of the FBI and that he submitted to questioning in consequence. As we held in *Coleman* v. *United States*, 111 U.S. App. D.C. 210, 218, 295 F. 2d 555, 563 (en banc 1961), this would constitute arrest, even though no actual force or visible physical restraint was used, or any formal declaration of arrest made.[5] The fact that Seals was told that he was free to leave and that he was not under arrest would hardly in the circumstances in which he found himself—never left alone and constantly in the company of FBI agents in their offices (observed by him to be difficult of access and

[5] In finding that Seals was not in fact under arrest before he confessed, the trial judge did not make it clear whether he considered whether or not Seals had reason to believe and did believe that he was under arrest. This was a very pertinent, if not determinative point, as the *Coleman* and *Kelley* cases, cited above, make clear. And *cf. Henry* v. *United States*, 361 U.S. 98 (1959), holding that the defendants there were arrested when FBI agents waved their car to a halt and thus restricted their liberty of movement.

presumably thought to be difficult of exit)—suggest to him, a 19-year-old high school student, that he was in fact free.[6]

The Government contends that the arrest did not occur until about 7:10 p.m., just after the appellant confessed. We have decided that the arrest occurred not later than 4:30 p.m. Whether the arrest was made with or without probable cause is not something we can readily determine from the record before us. But either alternative defeats the Government. If the arrest was made on probable cause, Seals should have been taken without delay to a magistrate. If there was no probable cause, he should not have been arrested.

Following his arrest, Seals was subjected to constant questioning and was not taken before the United

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[6] This case is very different from the situation in *Scarbeck* v. *United States*, —— U.S. App. D.C. ——, 317 F. 2d 546 (1962), *cert. denied*, 374 U.S. 856 (1963). There Scarbeck, an experienced foreign service officer of the State Department, was involved in a matter thought to affect the security of the United States. He was questioned by FBI agents during the course of three days in the State Department building and was released to security officers of the State Department for lunch and following the questioning at the end of each day. These were not police officers in the ordinary sense and they had no power to arrest. Following the completion of the questioning Scarbeck was suspended by the State Department and was no longer accompanied by the security officers. For the balance of that day and two days thereafter he was free to come and go as he liked. On the morning of the fourth day he was arrested on a warrant by the FBI on the street and promptly taken before a United States Commissioner.

The situation in *United States* v. *Vita*, 294 F. 2d 524 (2d Cir. 1961), *cert denied*, 369 U.S. 823 (1962), though generally similar to the one before us, is distinguishable in at least one important respect. Vita was "a twenty-eight year-old high school graduate who had prior experience with the criminal law * * *". 294 F. 2d at 534. Seals was young and still a student.

States Commissioner until 7:45 p.m., after his confession had been obtained. This unexplained delay of more than three hours was unnecessary and unreasonable within the meaning of *Mallory* v. *United States, supra.* There the Supreme Court said (354 U.S. at 454–55):

> "The police may not arrest on mere suspicion but only on 'probable cause.' The next step in proceeding is to arraign the arrested person before a judicial officer as quickly as possible so that he may be advised of his rights and so that the issue of probable cause may be promptly determined. * * *" [*H*]*e is not to be taken to police headquarters in order to carry out a process of inquiry that lends itself even if not so designed, to eliciting damaging statements to support the arrest and ultimately his guilt.*
>
> * * * [*T*]*he delay must not be of a nature to give opportunity for the extraction of a confession.* [Emphasis added.]

It follows that it was error to allow the appellant's confession, obtained as a result of the unnecessary delay in arraigning him, to be put before the jury. Fed. R. Crim. P. 5(a); *Mallory* v. *United States, supra; McNabb* v. *United States,* 318 U.S. 332 (1943).

The case is reversed and remanded for a new trial, with directions to exclude evidence as to the defendant's confession obtained during his detention at the FBI Field Office.

So ordered.

September Term, 1963

Criminal 878–61

Filed Nov. 15, 1963

No. 17550

JAMES R. SEALS, JR., APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

JUDGMENT

This cause came to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause be, and it is hereby, reversed and that this cause be, and it is hereby, remanded to the District Court for a new trial, with directions to exclude evidence as to the defendant's confession obtained during his detention at the Federal Bureau of Investigation Field Office.

Per Circuit Judge Washington
(initialed)

Dated Nov. 15, 1963.